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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

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9 Sandra Bronick, a single woman,
10 Plaintiff,

11 v.

12 State Farm Mutual Automobile Insurance
13 Company; et al.,
14 Defendants.

No. CV-11-01442-PHX-JAT

ORDER

15 Pending before the Court is Plaintiff's Motion to Recuse the Honorable James A.
16 Teilborg Pursuant to 28 U.S.C.A. § 144 and 28 U.S.C.A. § 455 (the "Motion") (Doc. 76).
17 Plaintiff's counsel has also filed what he calls an "Affidavit" of Facts and Reasons in
18 Support of Her Motion to Recuse (Doc. 77).

19 **I. BACKGROUND**

20 Plaintiff seeks to recuse the undersigned because Defendant's medical witness saw
21 the undersigned twice as a patient, and because the undersigned's former law firm utilized
22 the services of the same medical witness in the past for independent medical evaluations
23 ("IMEs"). Out of an abundance of precaution, the undersigned advised the parties before
24 oral argument on Defendant's pending motion for partial summary judgment (Doc. 65),
25 that he had twice seen Dr. Hartzler, an orthopedist, for minor orthopedic issues. The
26 undersigned explained to the parties that he had seen Dr. Hartzler most recently within the
27 preceding few months, and that he had concluded that given the circumstances there was
28 no basis for recusal.

1 Plaintiff's counsel has attached Exhibit A to the Affidavit (Doc. 77-1) which
 2 consists of seven cases in which Dr. Hartzler was hired by the undersigned's former law
 3 firm to perform IMEs. However, only two of the cases occurred when the undersigned
 4 was a member of the firm and the undersigned did not work on either case directly. The
 5 remaining five cases occurred in 2006, 2007, and 2008, long after the undersigned left the
 6 firm to go on the bench in 2000. Further, Plaintiff's counsel argues that,

7 Judge Teilborg obviously trusted Dr. Hartzler while he was in
 8 private practice else he would not have allowed his firm to
 9 hire [Dr. Hartzler] to perform IMEs. Most importantly
 10 however, is the fact that Judge Teilborg entrusted Dr. Hartzler
 with his own health.

11 (Doc. 77 at 4). Therefore, counsel concludes that the undersigned is inherently biased to
 12 trusting Defendant's physician. (*Id.*). Given this conclusion, Plaintiff's counsel then
 13 assumes that Dr. Hartzler will be called as a witness at trial and contends,

14 If Judge Teilborg does not recuse himself, Plaintiff is faced
 15 with the task of putting the Judge's treating physician on the
 16 stand and explaining to the Judge and jury why the Judge's
 17 own physician's opinions are tainted by financial bias; why
 18 the Judge's physician should not be trusted; and why the
 hiring of Dr. Hartzler—an action Judge Teilborg's previous
 firm routinely practiced—amounts to bad faith.

19 (*Id.*). Accordingly, Plaintiff's counsel argues that based on an objective standard of
 20 reasonableness the undersigned's impartiality might reasonably be questioned requiring
 21 the undersigned to recuse himself under 28 U.S.C. § 144 and 28 U.S.C. § 455. (*Id.*).

22 **II. ANALYSIS**

23 Section 455 is a self-analysis conducted by the undersigned. Section 144 states:

24 Whenever a party to any proceeding in a district court makes
 25 and files a timely and sufficient affidavit that the judge before
 26 whom the matter is pending has a personal bias or prejudice
 27 either against him or in favor of any adverse party, such judge
 shall proceed no further therein, but another judge shall be
 assigned to hear such proceeding.

28 The affidavit shall state the facts and reasons for the belief

1 that bias or prejudice exists, and shall be filed not less than
2 ten days before the beginning of the term at which the
3 proceeding is to be heard, or good cause shall be shown for
4 failure to file it within such time. A party may file only one
5 such affidavit in any case. It shall be accompanied by a
 certificate of counsel of record stating that it is made in good
 faith.

6 In an abundance of caution and pursuant to section 144, the Court refers this
7 motion to another district court judge to determine if the undersigned should recuse
8 himself.¹

9 However, the Court notes that Plaintiff has failed to comply with section 144.
10 Under this statute, Plaintiff must file a sufficient affidavit. While Plaintiff's counsel titled
11 the pleading "Affidavit of Facts and Reasons in Support of Her Motion" (Doc. 77), the
12 pleading is not an affidavit by definition, much less an affidavit by the Plaintiff herself.
13 According to Black's Law Dictionary, an affidavit is "a voluntary declaration of facts
14 written down and sworn to by the declarant before an officer authorized to administer
15 oaths." Black's Law Dictionary 66 (9th ed. 2009). Plaintiff's Motion is a pleading
16 written by Plaintiff's counsel with no indication that it was sworn to by counsel or
17 Plaintiff under oath, nor is the pleading made under an unsworn declaration under penalty
18 of perjury pursuant to 28 U.S.C. § 1746. In spite of these shortcomings, the Court will
19 still construe Plaintiff's filing as an affidavit for purposes of referring the section 144
20 motion to another judge for decision.

21 **III. CONCLUSION**

22 Based on the foregoing,

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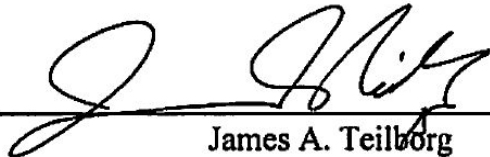
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28 ¹ The Clerk of the Court has randomly drawn the Honorable Neil V. Wake United
 States District Judge to hear Plaintiff's Motion.

1 **IT IS HEREBY ORDERED** that the Plaintiff's Motion to Recuse the Honorable
2 James A. Teilborg Pursuant to 28 U.S.C.A. § 144 (Doc. 76) is reassigned to the Honorable
3 Neil V. Wake United States District Judge.

4 Dated this 29th day of May, 2013.

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8 James A. Teilborg
9 Senior United States District Judge
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